parlors except in business districts see *City of St. Paul* v. *Kessler, et al.*, 178 N. W. 171; *Osborn* v. *City of Shreveport*, 143 La. 932. See also 18 MICH. L. REV. 246.

PUBLIC UTILITIES RATES—POWER OF COMMISSION TO CHANGE CONTRACT RATES.—A traction company obtained consent of the city of New York to construct and operate a street railway. The consent was given upon the condition that five cents should be the maximum fare. The successor to the rights of the traction company applied to the Public Service Commission for authority to charge a higher fare on the ground that the five cent fare was inadequate to enable the company to continue service. The city secured a writ of prohibition directed to the commission. *Held,* that the order issuing the writ should be reversed. *People* v. *Nixon* (N. Y., 1920), 128 N. E. 247.

This adds another to the rather variegated New York cases previously noticed in 18 MICH. L. REV. 320, 806. In those former cases the public utilities were sometimes granted and sometimes denied release from contract rates. The court recognizes the power of the legislature as paramount to that of the municipality, except where there has been clear grant of the power by the legislature to the municipality to enter into such a contract with the utility. The instant case is decided against the city, Hogan, J., dissenting, on the ground that at the time the franchise was granted the law gave the commission power to raise or lower rates, and municipalities by their contracts may not nullify existing statutes. In a case decided on the same day as the *Nixon* case, *supra,—Niagara Falls* v. *Public Service Com.* (N. Y., 1920), 128 N. E. 247, the court in an opinion written by Hogan, J., who dissented in the *Nixon* case, held that prohibition does lie to restrain action by the commission to change fares fixed in a contract made when the New York statute gave the commission no power over rates fixed by contract with the municipality. The court refused to pass upon whether the legislature under the police power of the state had the power to abrogate such agreements over the objection of the municipality. It was enough for that case that the legislature had three times since the decision of *Quinby* v. *Public Serv. Com.*, 223 N. Y. 244, refused to confer any such power on the commission. See 18 MICH. L. REV. 320. McLaughlin, J., dissented on the ground that the city made the contract subject not merely to the laws as they then existed, but "as they might thereafter be changed by the legislature," citing *Puget Sound T. K. and P. W.* v. *Reynolds*, 244 U. S. 574. See the extensive annotation of this and other cases in 5 L. R. A. 13, 36, 44, 60. The dissenting judge is ready to pass on the point which the court refuses to decide, and takes the broad ground that this police power is "something the state cannot surrender, because to do so would be to surrender a sovereign power." Asserting that the legislature has conferred this power upon the commission he holds that the prohibition would not lie. In still a third case decided on the same day, *People* v. *Nixon*, 128 N. E. 255, the New York court passes on several cases, making the power of the commission over franchises granted by municipalities depend upon the state of the law at the time the franchise was granted. It is still an open question in New York whether the legislature can empower the commission

to change rates fixed in contracts made by municipalities acting under clear legislative sanction; the court finds the legislature thus far has not given the commission any such power and so a decision of that point has not been necessary. Notwithstanding the numerous dissents on these cases it seems reasonably sure that the court would decide in favor of such power in the legislature if the legislature were to attempt to exercise it, and so it is believed would the Federal courts and most of the state courts hold. See, for example, *Public Utilities Com.* v. *Rhode Island Co.* (R. I., June 30, 1920), 110 Atl. 654, upholding the paramount authority of the state to regulate rates through the agency of a commission. The opinion, however, quotes from *Milwaukee E. R. and L. Co.* v. *Railroad Com.*, 238 U. S. 180, a paragraph recognizing the right to make contracts which shall prevent the state during a given period from exercising this power over rates, though such renunciation of a sovereign right must be so clearly and unequivocally evidenced as to admit of no doubt. If it be in the full sense a sovereign power it is difficult to see how it can be surrendered, no matter how clear and unequivocal the language.

THE RULE IN SHELLEY'S CASE—FURTHER QUALIFYING WORDS.—The deed in question conveyed certain premises to the plaintiff "for life, remainder in *fee simple* to the heirs begotten *of the body* * * *." The plaintiff brought suit to quiet title against her son as defendant on the theory that she was entitled to an estate in fee tail by operation of the Rule in Shelley's Case, and that this, in turn, was converted into a fee simple by birth of issue. Notwithstanding a statute which provided that "the court shall carry into effect the expressed intent of the parties," it was *held,* that the Rule in Shelley's Case is still in force in Nebraska; but, that the plaintiff was entitled to a life estate only, since the words, "heirs of the body", were not used in their technical sense, the grantor having also provided that such heirs should take a fee simple. *Yates* v. *Yates* (Neb., 1920), 178 N. W. 262.

The decision is one of many examples of the tenacious grip of this obsolete doctrine of the common law upon our present day jurisprudence. See, *Doyle* v. *Andis,* 127 Iowa 36; 3 MICH. L. REV. 393. Nebraska still clings to the rule which has now been abandoned by most of the states of this country. *Wilson* v. *Terry,* 130 Mich. 73; *Richardson* v. *Wheatland,* 7 Met. 169. It is curious to note that the court, in the principal case, attempts to justify the operation of the Rule in Shelley's Case by its giving effect to the general intent over and against the particular intent. *Yates* v. *Yates, supra,* at page 263; *Fraser* v. *Chene, et al,* 2 Mich. 81, 91. The theory of general and particular intent has now been exploded. GRAY, THE RULE AGAINST PERPETUITIES, §§ 881-2; *Doe* v. *Gallini,* 5 B. & Ad. 621, 640. However, the court was undoubtedly correct in its decision that the technical force of the words, "of the body", was destroyed by the further direction that the estate in remainder was to be a fee simple. *Ault* v. *Hillyard,* 138 Iowa 239. It is worthy of note that the court, in the principal case, might have arrived at the same decision by construing the words of the instrument with reference to the intent of the